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MAR - 6 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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March 6, 1997

William F. Caton, Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

NEW YORK OFFICE
575 MADISON AVENUE
NEW YORK, NY 10022-2585

NEW JERSEY OFFICE
ONE GATEWAY CENTER
NEWARK, NJ 07102-5397

Re: **MM Docket No. 87-268**
Advance Television Systems

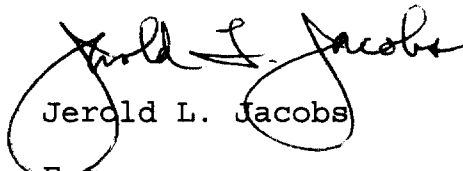
SPECIAL COUNSEL
JEROLD L. JACOBS

Dear Mr. Caton:

On behalf of our client, Shockley Communications Corporation, licensee of Station WKOW-TV, Madison, Wisconsin, transmitted herewith for filing are an original and nine (9) copies of its "Request for Confirmation of FCC-Proposed DTV Assignment" ("Request") for consideration in the above-referenced Docket. As demonstrated in Paragraphs 1-2 of the Request, good cause exists for granting any necessary waiver, pursuant to §1.3 of the Commission's Rules, so that the Commission can take the Request into account as it prepares the next iteration of the DTV Table of Allotments.

Please direct any communications or inquiries concerning this matter to the undersigned.

Very truly yours,


Jerold L. Jacobs

Enc.

cc: As on Certificate of Service (all w/enc.)

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MAR 6 1997

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Advanced Television Systems)
and Their Impact Upon the) MM Docket No. 87-268
Existing Television Broadcast)
Service)

TO: The Commission

REQUEST FOR CONFIRMATION OF FCC-PROPOSED DTV ASSIGNMENT

SHOCKLEY COMMUNICATIONS CORPORATION ("SCC"), licensee of Station WKOW-TV, Channel 27, Madison, Wisconsin, by its attorneys, hereby requests that the assignment of DTV Channel 26 to Station WKOW-TV, which was proposed in the Commission's draft DTV Table of Allotments (the "Table") -- Appendix B of the Sixth Further Notice of Proposed Rule Making ("Sixth Notice"), 11 FCC Rcd 10968 (1996) -- be confirmed in the next iteration of the Table. Although the formal deadline for Reply Comments was January 24, 1997, SCC urges that good cause exists for granting a waiver, pursuant to §1.3 of the Commission's Rules, so that the Commission can take this Request into account. In support whereof, the following is shown:

I. Introduction And Good Cause Showing

1. SCC signed the November 22, 1996 "Broadcasters' Comments on the Sixth Notice of Proposed Rulemaking" ("Comments") in order to express its broad approval of the policy positions expressed therein. However, it did not fully endorse the "Modified DTV Table of Allotments" ("Modified Table") which was proposed by the Broadcasters Caucus (the "Caucus") in the Comments. Specifically, while the Commission proposed that DTV Channel 26 should

be assigned to Station WKOW-TV (see Page B-41 of Appendix B of the Sixth Notice), the Modified Table recommended the assignment of DTV Channel 29. Appendix E3 of the Comments is a list of pending requests for changes to the Modified Table, and it states (at 17) that, on November 6, 1996, SCC requested that its DTV assignment be retained as Channel 26. Importantly, the Comments (at 47) did not purport to adjudicate any requests for changes to the Modified Table. Instead, they proposed (id.) that "industry channel coordinators" examine the requests and make recommendations to the Commission for final action.

2. In that same vein, the December 31, 1996 draft "Broadcasters Caucus Reply to Comments" ("Reply Comments") stated (at 9) that, on January 6, 1997, the Caucus' coordinating process would submit to the Commission "its first recommendations on technically sound and relatively non-controversial DTV channel change requests to the Modified Table". SCC reasonably expected that its request for retention of DTV Channel 26 would be included in those recommendations. However, no proposed changes to the Modified Table were filed by the Caucus on January 6, in the January 24, 1997 final version of the Reply Comments, or thereafter. Hence, SCC is compelled to belatedly present its own case to the Commission. SCC urges that the paramount public interest in having a complete record for decision in this proceeding and in reconciling the Commission's rulemaking actions with real-world situations and with the Commission's contemporaneous issuance of construction permits (see below) warrants consideration of this Request and grant of any required rule waiver to do so.

II. Assignment Of DTV Channel 26 To Station WKOW-TV Is Essential

3. SCC has obtained local approval to relocate WKOW-TV's transmitter to the

"Community Candelabra Tower" owned by the University of Wisconsin and located just west of Madison. Because the Candelabra has only one vacant leg, WKOW-TV's successful use of it depends upon a common transmission line/common antenna for NTSC and DTV signal distribution purposes. Therefore, retaining the Commission's Channel 26 DTV assignment (which is compatible with collocation of WKOW-TV's Channel 27 NTSC frequency) is essential for SCC to meet the limited space availability situation on the Candelabra.

4. Following receipt of local approval to use the Candelabra site, WKOW-TV promptly filed an FCC Form 301 minor modification application (File No. BPCT-960607KF) to move there. That application was granted on December 9, 1996, and a copy of WKOW-TV's permit is attached hereto as Exhibit A. Therefore, SCC is in the untenable position of having, on the one hand, an FCC-approved NTSC site change authorization and a compatible FCC-proposed DTV assignment (Channel 26), and, on the other hand, the same NTSC site change authorization and an incompatible Caucus-proposed DTV assignment (Channel 29). SCC submits that Commission fine-tuning of the DTV assignment process must address and resolve such real-world assignment issues. In WKOW-TV's case, SCC urges that the Commission's proposed assignment of Channel 26 to WKOW-TV is technically correct and should be confirmed.

5. Put differently, assigning DTV Channel 29 to WKOW-TV would render worthless WKOW-TV's proposed site change and the Commission's December 1996 construction permit, even though SCC filed its site change application in June 1996 -- two months before the Commission released the Sixth Notice and proposed Table, and five and one-half months before the Caucus filed its Comments and proposed Modified Table. While SCC's grant was

specifically conditioned "on the outcome of the digital television (DTV) rule making proceeding in MM Docket No. 87-268" (Exh. A at p. 5), the very next sentence made it clear that its intent was interference-focused -- to ensure that "To the extent that the station's Grade B contour or potential for causing interference is extended into new areas by this authorization, the Commission may require the facilities authorized herein to be reduced or modified" (*id.*). SCC is not aware that any interference would be caused to any existing NTSC channel or any proposed DTV channel by WKOW-TV's new permit or by the Commission proposed assignment of DTV Channel 26 to WKOW-TV. The same is true, SCC believes, if the specifications for WKOW-TV's DTV assignment take account (as they should) of WKOW-TV's December 1996 modified facilities authorization as to antenna height and ERP for NTSC/DTV "service replication" purposes. Moreover, and importantly, WKOW-TV's newly-authorized transmitter site is exactly 2.8 air miles from its present site, which is well within the "three-mile radius" limit specified for site changes in Paragraph 56 of the Sixth Notice.

III. Conclusion

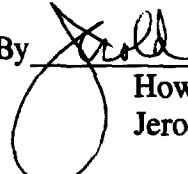
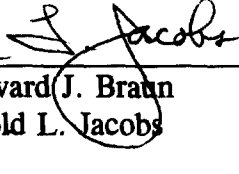
6. In sum, to quote an old adage, "If it ain't broke, don't fix it". The Commission's proposal to assign DTV Channel 26 to WKOW-TV is fully consistent with the Commission's channel spacing and allotment/assignment requirements in this proceeding. Moreover, it accords with WKOW-TV's site change needs and its recently granted construction permit. On the other hand, the Modified Table's proposal to assign DTV Channel 29 to WKOW-TV is wholly incompatible with WKOW-TV's transmitter site requirements. Under these circumstances, administrative due process, common sense, and the paramount public interest require that the

Commission's proposal to assign DTV Channel 26 to WKOW-TV should be confirmed and the Modified Table's alternative suggestion should be rejected.

WHEREFORE, in light of the foregoing, SCC respectfully requests that the Commission should confirm the assignment of DTV Channel 26 to Station WKOW-TV when it issues the next iteration of the DTV Table of Allotments.

Respectfully submitted,

SHOCKLEY COMMUNICATIONS
CORPORATION

By  
Howard J. Brann
Jerold L. Jacobs

ROSENMAN & COLIN LLP
1300 - 19th Street, N.W. Suite 200
Washington, D.C. 20036
(202) 463-4640

Its Attorneys

Dated: March 6, 1997



United States of America

EXHIBIT A

FEDERAL COMMUNICATIONS COMMISSION
TELEVISION BROADCAST STATION
CONSTRUCTION PERMIT

Official Mailing Address:

SHOCKLEY COMMUNICATIONS CORP.
5725 TOKAY BOULEVARD
MADISON, WI 53719

Clay C. Pendarvis
Chief, TV Branch
Video Services Division
Mass Media Bureau

Grant Date: DEC 09 1996

Call Sign: WKOW-TV

File Rm. 701

This permit expires 3:00 a.m.
local time, 24 months after
grant date specified above.

Permit File No.: BPCT-960607KF

Subject to the provisions of the Communications Act of 1934, as amended, subsequent acts and treaties, and all regulations heretofore or hereafter made by this Commission, and further subject to the conditions set forth in this permit, the permittee is hereby authorized to construct the radio transmitting apparatus herein described. Installation and adjustment of equipment not specifically set forth herein shall be in accordance with representations contained in the permittee's application for construction permit except for such modifications as are presently permitted, without application, by the Commission's Rules.

This permit shall be automatically forfeited if the station is not ready for operation within the time specified (date of expiration) or within such further time as the Commission may allow, unless completion of the station is prevented by causes not under the control of the permittee. See Sections 73.3598, 73.3599 and 73.3534 of the Commission's Rules.

Equipment and program tests shall be conducted only pursuant to Sections 73.1610 and 73.1620 of the Commission's Rules.

Name of Permittee:

SHOCKLEY COMMUNICATIONS CORP.

Station Location:

WI-MADISON

Frequency (MHz): 548.0 - 554.0

Carrier Frequency (MHz): 549.26 Visual 553.76 Aural

Channel: 27

Hours of Operation: Unlimited

Transmitter location (address or description):

6963 Mineral Point Road, Madison, Dane County, WI

Transmitter: Type Accepted. See Sections 73.1660, 73.1665 and 73.1670 of the Commission's Rules.

Antenna type: (directional or non-directional): Directional

Description: DIELECTRIC TFU-36-JDAS

Beam Tilt: 0.75 Degrees Electrical

Major lobe directions (degrees true): 0.0 120.0 240.0

Antenna Coordinates: North Latitude : 43 3 21
West Longitude : 89 32 6

Transmitter output power.....: As required to achieve authorized ERP

Maximum effective radiated power (PEAK): 5000.0 kW
: 37.0 DBK

Height of radiation center above ground.....: 412 Meters

Height of radiation center above mean sea level.: 755 Meters

Height of radiation center above average terrain: 455 Meters

Antenna structure registration number: none

Overall height of antenna structure above ground
(including obstruction lighting if any).....: 434 Meters

Obstruction marking and lighting specifications for antenna structure:

It is to be expressly understood that the issuance of these specifications is in no way to be considered as precluding additional or modified marking or lighting as may hereafter be required under the provisions of Section 303(q) of the Communications Act of 1934, as amended.

PARAGRAPH 03.0, FCC FORM 715 (APRIL 1985):

There shall be installed at the top of the structure one 300 m/m electric code beacon equipped with two 620- or 700-watt lamps (PS-40, Code Beacon type), both lamps to burn simultaneously, and equipped with aviation red color filters. Where a rod or other construction of not more than 20 feet in height and incapable of supporting this

beacon is mounted on top of the structure and it is determined that this additional construction does not permit unobstructed visibility of the code beacon from aircraft at any normal angle of approach, there shall be installed two such beacons positioned so as to insure unobstructed visibility of at least one of the beacons from aircraft at any normal angle of approach. The beacons shall be equipped with a flashing mechanism producing not more than 40 flashes per minute nor less than 12 flashes per minute with a period of darkness equal to approximately one-half of the luminous period.

PARAGRAPH 10.0, FCC FORM 715 (APRIL 1985):

On levels at approximately four-fifths, three-fifths, two-fifths and one-fifth of the over-all height of the tower one similar flashing 300 m/m electric code beacon shall be installed in such position within the tower proper that the structural members will not impair the visibility of this beacon from aircraft at any normal angle of approach. In the event these beacons cannot be installed in a manner to insure unobstructed visibility of the beacons from aircraft at any normal angle of approach, there shall be installed two such beacons at each level. Each beacon shall be mounted on the outside of diagonally opposite corners or opposite sides of the tower at the prescribed height.

PARAGRAPH 19.0, FCC FORM 715 (APRIL 1985):

On levels at approximately nine-tenths, seven-tenths, one-half, three-tenths and one-tenth of the over-all height of the tower, at least one 116- or 125-watt lamp (A21/TS) enclosed in an aviation red obstruction light globe shall be installed on each outside corner of the structure.

PARAGRAPH 21.0, FCC FORM 715 (APRIL 1985):

All lighting shall burn continuously or shall be controlled by a light sensitive device adjusted so that the lights will be turned on at a north sky light intensity level of about 35 foot candles and turned off at a north sky light intensity level of about 58 foot candles.

PARAGRAPH 22.0, FCC FORM 715 (APRIL 1985):

During construction of an antenna structure, for which obstruction lighting is required, at least two 116- or 125-watt lamps (A21/TS) enclosed in aviation red obstruction light globes, shall be installed at the uppermost point of the structure. In addition, as the height of the structure exceeds each level at which permanent obstruction lights will be required, two similar lights shall be displayed nightly from sunset to sunrise until the permanent obstruction lights have been installed and placed in operation, and shall be positioned so as to insure unobstructed visibility of at least one of the lights at any normal angle of approach. In lieu of the above temporary warning lights, the permanent obstruction lighting fixtures may be installed and operated at each required level as each such level is exceeded in height during construction.

PARAGRAPH B . . , FCC FORM 715-A (MAY 1985):

There shall be installed at the top of the skeletal or other main support structure three or more high intensity light units which conform to FAA/DOD Specification L-856 High Intensity Obstruction

Lighting Systems. The complement of units shall emit a white high intensity light and produce an effective intensity of not less than 200,000 candelas (daytime) uniformly about the antenna structure in the horizontal plane. The effective intensity shall be reduced to approximately 20,000 candelas at twilight, and to approximately 4,000 candelas at night. The light units shall be mounted in a manner to ensure unobstructed viewing from aircraft at any normal angle of approach, so that the effective intensity of the full beam is not impaired by any structural member of the skeletal framework. The units will normally be adjusted so that the center of the beam is in the horizontal plane.

PARAGRAPH F . , FCC FORM 715-A (MAY 1985):

At the approximate one-fifth, two-fifths, three-fifths and four-fifths levels of the skeletal tower there shall be installed three or more high intensity light units which conform to FAA/DOD Specification L-856, High Intensity Obstruction Lighting Systems. The complement of units shall emit a white high intensity light and produce an effective intensity of not less than 200,000 candelas (daytime) uniformly about the antenna structure in the horizontal plane. The effective intensity shall be reduced to approximately 20,000 candelas at twilight, and to approximately 4,000 candelas at night. The light units shall be mounted in a manner to ensure unobstructed viewing from aircraft at any normal angle of approach, so that the effective intensity of the full beam is not impaired by any structural member of the skeletal framework. The normal angular adjustment of the beam centers above the horizon shall be three degrees at the one-fifth level, two degrees at the two-fifths level, one degree at the three-fifths level and zero degrees at the four-fifths level.

PARAGRAPH H . , FCC FORM 715-A (MAY 1985):

All lights shall be synchronized to flash simultaneously at 40 pulses per minute. The light system shall be equipped with a light sensitive control device which shall face the north sky and cause the intensity steps to change automatically when the north sky illumination on a vertical surface is as follows:

1. Day to Twilight: Shall not occur before the illumination drops to 60 footcandles, but shall occur before it drops to 30 footcandles.
2. Twilight to Night: Shall not occur before the illumination drops to 5 footcandles, but shall occur before it drops to 2 footcandles.
3. Night to Day: The intensity changes listed in 1. and 2. above shall be reversed in transitioning from the night to day modes.

PARAGRAPH I . , FCC FORM 715-A (MAY 1985):

During construction of an antenna structure for which high intensity lighting is required, at least two lights shall be installed at the uppermost part of the structure. In addition, at each level where permanent obstruction lighting will be required, two similar lights shall be installed. Each temporary light shall consist of at least 1,500 candelas (peak effective intensity), synchronized to flash simultaneously at 40 pulses per minute. Temporary lights shall be operated continuously, except for periods of actual construction, until

the permanent obstruction lights have been installed and placed in operation. Lights shall be positioned to ensure unobstructed viewing from aircraft at any normal angle of approach. If practical, the permanent obstruction lights may be installed at each level as the structure progresses. NOTE: If battery operated, the batteries should be replaced or recharged at regular intervals to preclude failure during operation.

In accordance with above Paragraphs B, F, H, I of FCC Form 715A (DAY) and Paragraphs 3, 10, 19, 21, 22 of FCC Form 715 (NIGHT) Dual Lighting.

Special operating conditions or restrictions:

1. Grant of this authorization is conditioned on the outcome of the digital television (DTV) rule making proceeding in MM Docket No. 87-268. To the extent that the station's Grade B contour or potential for causing interference is extended into new areas by this authorization, the Commission may require the facilities authorized herein to be reduced or modified.

*** END OF AUTHORIZATION ***

CERTIFICATE OF SERVICE

I, Maria Alvarez-Newsom, a secretary in the law offices of Rosenman & Colin LLP, do hereby certify that on this 6th day of March, 1997, I have caused to be mailed, or hand-delivered, a copy of the foregoing "Request for Confirmation of FCC-Proposed DTV Assignment" to the following:

Roy J. Stewart, Chief*
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 314
Washington, D.C. 20554

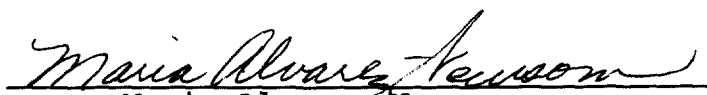
Bruce A. Franca, Deputy Chief*
Office of Engineering and Technology
Federal Communications Commission
2000 M Street, N.W., Room 480
Washington, DC 20554

R. Alan Stillwell, Economic Advisor*
Office of Engineering and Technology
Federal Communications Commission
2000 M Street, N.W., Room 480
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Mr. Robert Eckert*
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Mr. Gordon W. Godfrey*
Mass Media Bureau
Federal Communications Commission
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Washington, D.C. 20554

Clay Pendarvis, Chief*
Television Branch
Video Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., Room 702
Washington, D.C. 20554


Maria Alvarez-Newsom

***BY HAND**